

Jul 14, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ELIJAH B.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

No. 2:20-CV-00020-SAB

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are Plaintiff's and Defendant's Motions for Summary Judgment, ECF Nos. 14 and 22. Plaintiff is represented by Dana Madsen.

¹ Pursuant to the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, Plaintiff's name is partially redacted.

² Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT . . . # 1**

1 Defendant is represented by David Burdett and Tim Durkin. The motions were
2 considered without oral argument. Having considered the briefing and the
3 applicable law, the Court grants Plaintiff's motion and denies Defendant's motion.

4 **Jurisdiction**

5 Plaintiff filed a disability insurance benefits application on March 28, 2018,
6 alleging a disability onset date of June 1, 2015. Plaintiff's claims were initially
7 denied on June 18, 2018, and again upon reconsideration on September 17, 2018.
8 At Plaintiff's request, the ALJ held a hearing on August 7, 2019. On August 29,
9 2019, the ALJ issued an opinion affirming the denial of Plaintiff's claims for
10 benefits.

11 Plaintiff requested review of the ALJ decision, which the Appeals Council
12 denied on November 20, 2019. Plaintiff then filed a timely appeal with the United
13 States District Court for the Eastern District of Washington on January 13, 2020.
14 ECF No. 1. The matter is before this Court under 42 U.S.C. § 405(g).

15 **Sequential Evaluation Process**

16 The Social Security Act defines disability as the "inability to engage in any
17 substantial gainful activity by reason of any medically determinable physical or
18 mental impairment which can be expected to result in death or which has lasted or
19 can be expected to last for a continuous period of not less than twelve months." 42
20 U.S.C. § 1382c(a)(3)(A). A claimant shall be determined to be under a disability
21 only if his impairments are of such severity that the claimant is not only unable to
22 do his previous work, but cannot, considering claimant's age, education, and work
23 experiences, engage in any other substantial gainful work which exists in the
24 national economy. 42 U.S.C. § 1382c(a)(3)(B).

25 The Commissioner has established a five-step sequential evaluation process
26 for determining whether a person is disabled. 20 C.F.R. § 416.920(a)(4); *Bowen v.*
27 *Yuckert*, 482 U.S. 137, 140-42 (1987). The steps are as follows:

1 (1) Is the claimant engaged in substantial gainful activities? 20 C.F.R. §
2 404.1520(b). Substantial gainful activity is work done for pay and requires
3 compensation above the statutory minimum. *Id.*; *Keyes v. Sullivan*, 894 F.2d 1053,
4 1057 (9th Cir. 1990). If the claimant is engaged in substantial activity, benefits are
5 denied. 20 C.F.R. § 404.1520(b). If he is not, the ALJ proceeds to step two.

6 (2) Does the claimant have a medically severe impairment or combination of
7 impairments? 20 C.F.R. § 404.1520(c). If the claimant does not have a severe
8 impairment or combination of impairments, the disability claim is denied. A severe
9 impairment is one that lasted or must be expected to last for at least 12 months and
10 must be proven through objective medical evidence. 20 C.F.R. § 404.1509. If the
11 impairment is severe, the evaluation proceeds to the third step.

12 (3) Does the claimant's impairment meet or equal one of the listed
13 impairments acknowledged by the Commissioner to be so severe as to preclude
14 substantial gainful activity? 20 C.F.R. § 404.1520(d); 20 C.F.R. § 404 Subpt. P.
15 App. 1. If the impairment meets or equals one of the listed impairments, the
16 claimant is conclusively presumed to be disabled. *Id.* If the impairment is not one
17 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.
18 Before considering Step 4, the ALJ must first determine the claimant's residual
19 functional capacity. 20 C.F.R. § 404.1520(e). An individual's residual functional
20 capacity is his ability to do physical and mental work activities on a sustained basis
21 despite limitations from his impairments.

22 (4) Does the impairment prevent the claimant from performing work he has
23 performed in the past? 20 C.F.R. § 404.1520(f). If the claimant is able to perform
24 his previous work, he is not disabled. *Id.* If the claimant cannot perform this work,
25 the evaluation proceeds to the fifth and final step.

26 (5) Is the claimant able to perform other work in the national economy in
27 view of his age, education, and work experience? 20 C.F.R. § 404.1520(g). The
28 initial burden of proof rests upon the claimant to establish a *prima facie* case of

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT . . . # 3**

1 entitlement to disability benefits. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
2 1999). This burden is met once a claimant establishes that a physical or mental
3 impairment prevents him from engaging in his previous occupation. *Id.* At Step
4 Five, the burden shifts to the Commissioner to show that the claimant can perform
5 other substantial gainful activity. *Id.*

6 **Standard of Review**

7 The Commissioner's determination will be set aside only when the ALJ's
8 findings are based on legal error or are not supported by substantial evidence in the
9 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing
10 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
11 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."
12 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial
13 evidence is "such relevant evidence as a reasonable mind might accept as adequate
14 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the
15 ALJ's denial of benefits if the evidence is susceptible to more than one rational
16 interpretation, one of which supports the decision of the administrative law judge.
17 *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). The Court reviews the
18 entire record. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). "If the evidence
19 can support either outcome, the court may not substitute its judgment for that of the
20 ALJ." *Matney*, 981 F.2d at 1019.

21 A decision supported by substantial evidence will be set aside if the proper
22 legal standards were not applied in weighing the evidence and making the decision.
23 *Brawner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).
24 An ALJ is allowed "inconsequential" errors as long as they are immaterial to the
25 ultimate nondisability determination. *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d
26 1050, 1055 (9th Cir. 2006).

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28 //

Facts

Plaintiff was 36 years old at the time of his alleged disability onset date, though he is now 42 years old. He is 5'7" tall, weighs 250 lbs., and is right-handed. Plaintiff is divorced and has custody of his two children, one who is elementary school aged and one who is high school or college aged. His educational experience consists of a high school diploma and some courses at community college. Before his alleged disability, Plaintiff worked in Human Resources, first in the U.S. Army and then in the National Guard. Plaintiff states that, while in the military, he was deployed to Iraq and then Afghanistan, where he was exposed to combat situations. Specifically, Plaintiff states that he experienced rocket attacks, had his squad vehicle blown up, and witnessed two close friends be seriously injured. Plaintiff was honorably discharged from the military after nearly 14 years of service.

In Plaintiff's application, he alleged that he had both physical and mental limitations. For physical limitations, Plaintiff alleged that he suffers back pain, which causes minimal to severe muscle spasms; pressure and stiffness in his neck; problems with his right shoulder; carpal tunnel syndrome, which causes occasional tingling and numbness in his fingertips and hand cramps; left hip and knee pain, which—in combination with his back pain—creates pain while sitting, walking, and performing other basic tasks; and migraines that come multiple times a month and last for 3-4 hours. Specifically, he stated that he can only write for 15 minutes at a time; sit and/or stand for 30 minutes at a time; drive a vehicle up to 15 miles; and walk up to 1/8 of a mile without extreme pain.

As for mental limitations, Plaintiff alleged that he has PTSD from his experiences in the military, which can be triggered by loud noises, whistling sounds, and flashbacks while driving his car. He also alleged that he experiences depression and anxiety, as well as nightmares and difficulty sleeping. He stated

1 that he only leaves the house approximately once a week and does not interact well
2 with other people because he often becomes agitated and nervous.

3 **The ALJ's Findings**

4 On August 29, 2019, the ALJ issued an opinion affirming denial of benefits.
5 The ALJ concluded that Plaintiff's allegations were not consistent with the record
6 and that Plaintiff could perform work that exists in significant numbers in the
7 national economy. Thus, the ALJ held that Plaintiff was not disabled.
8 Administrative Record ("AR") at 28.

9 At **step one**, the ALJ found that Plaintiff has not engaged in substantial
10 gainful activity since June 1, 2015, the alleged disability onset date. *Id.* at 17.

11 At **step two**, the ALJ found that Plaintiff had the following severe
12 impairments: degenerative disc disease of the lumbar spine; obesity; posttraumatic
13 stress disorder (PTSD); major depressive disorder; and unspecified anxiety
14 disorder. *Id.* at 17-18.

15 At **step three**, the ALJ found that Plaintiff did not have an impairment or a
16 combination of impairments that meets or medically equals any Listing. *Id.* at 18-
17 20.

18 The ALJ concluded that Plaintiff had a residual function capacity to
19 perform:

20 a full range of light work as defined in 20 CFR 404.1567(b) except: he
21 can only occasionally climb ladders, ropes, or scaffolds; he can
22 frequently perform all other postural activities; he cannot have
23 concentrated exposure to vibration or hazards (such as unprotected
24 heights or moving mechanical parts); he is limited to a moderate noise
environment; he cannot operate a motor vehicle; he can have only
occasional contact with the public; and he cannot do fast-paced work.

25 *Id.* at 20.

26 At **step four**, the ALJ found that Plaintiff was capable of performing past
27 relevant work as a Personnel Clerk, which did not require performance of work-
28 related activities precluded by the claimant's residual functional capacity. *Id.* at 26.

1 At **step five**, the ALJ found that, even if Plaintiff could not perform past
2 relevant work, Plaintiff was not disabled and that he was capable of making a
3 successful adjustment to other work that exists in significant numbers in the
4 national economy, including Office Helper, Mail Clerk, or Office Cleaner. *Id.* at
5 27-28.

6 **Issues for Review**

- 7 1. Did the ALJ err by improperly discrediting Plaintiff's subjective complaints
8 about his symptoms?
- 9 2. Did the ALJ err by failing to properly weigh medical opinions from Dr.
10 Mansfield-Blair and Dr. Rubin regarding Plaintiff's limitations?

11 **Discussion**

- 12 1. Did the ALJ err by improperly discrediting Plaintiff's subjective complaints
13 about his symptoms?

14 Plaintiff argues that the ALJ improperly discounted his subjective
15 complaints about the nature and intensity of his limitations because the ALJ
16 concluded that Plaintiff could still engage in daily activities (*e.g.*, prepare meals,
17 clean, get around, drive his car, go shopping, handle finances, and take care of his
18 two sons). ECF No. 14 at 15. However, Plaintiff argues that, under Ninth Circuit
19 caselaw, a claimant's ability to perform daily activities does not necessarily detract
20 from their credibility regarding the severity of their limitations. *Id.* at 16-18. Thus,
21 Plaintiff argues that the ALJ's failure to properly consider his subjective
22 complaints of limitations constitutes harmful error and requires remand. *Id.* at 18.

23 Defendant argues the ALJ provided five legally sufficient reasons to
24 discount Plaintiff's credibility regarding his symptoms and that his findings are
25 entitled to deference. ECF No. 17 at 14-17. Specifically, Defendant argues that the
26 ALJ found that (1) Plaintiff's activities were inconsistent with his symptom
27 complaints; (2) Plaintiff applied for work during the relevant period, which
28 undermined his claim of disability; (3) Plaintiff was inconsistent in reporting his

1 symptoms; (4) Plaintiff's conservative treatment for back pain undermined the
2 severity of his symptom complaints; and (5) Plaintiff had minimal objective
3 evidence to support his symptom complaints. ECF No. 22 at 4-10. Thus, Defendant
4 argues that the ALJ's finding that Plaintiff overstated his symptom complaints was
5 supported by substantial evidence. *Id.* at 10.

6 **A. Legal Standard**

7 The ALJ is responsible for making credibility determinations. *Lingenfelter v.*
8 *Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). An ALJ engages in a two-step
9 analysis to determine whether a claimant's testimony regarding subjective pain or
10 symptoms is credible. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014).
11 "First, the ALJ must determine whether the claimant has presented objective
12 medical evidence of an underlying impairment 'which could reasonably be
13 expected to produce the pain or other symptoms alleged.'" *Id.* (quoting
14 *Lingenfelter*, 504 F.3d at 1036). In this analysis, the claimant is not required to
15 show "that [his] impairment could reasonably be expected to cause the severity of
16 the symptom [he] has alleged; [he] need only show that it could reasonably have
17 caused some degree of that symptom," *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th
18 Cir. 1996). In addition, he need not produce "objective medical evidence of the
19 pain or fatigue itself, or the severity thereof." *Id.*

20 Once a claimant has produced evidence of an impairment, the ALJ may not
21 discredit testimony regarding symptoms simply by asserting that they are
22 unsupported by objective evidence. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883
23 (9th Cir. 2006). Rather, the ALJ must provide specific, cogent reasons to find that
24 the claimant is not credible. *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006)
25 (citing *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990)). If the ALJ's
26 credibility finding is supported by substantial evidence in the record, the Court
27 may not engage in second-guessing. *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th
28

1 Cir. 2002). The Court will affirm the ALJ’s reasoning so long as it is clear and
2 convincing. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

3 “Engaging in daily activities that are incompatible with the severity of
4 symptoms alleged can support an adverse credibility determination.” *Ghanim v.*
5 *Colvin*, 763 F.3d 1154, 1165 (9th Cir. 2014). Daily activities may be grounds for
6 an adverse credibility finding if (1) a claimant’s activities contradict his other
7 testimony, or (2) a claimant “is able to spend a substantial part of his day engaged
8 in pursuits involving the performance of physical functions that are transferable to
9 a work setting.” *Orn*, 495 F.3d at 639 (citing *Fair v. Bowen*, 885 F.2d 597, 603
10 (9th Cir. 1989)). However, “[t]he Social Security Act does not require that
11 claimants be utterly incapacitated to be eligible for benefits.” *Fair*, 885 F.2d at
12 603. Recognizing that “disability claimants should not be penalized for attempting
13 to lead normal lives in the face of their limitations,” the Ninth Circuit has held that
14 “[o]nly if [a claimant’s] level of activity were inconsistent with his claimed
15 limitations would those activities have any bearing on his credibility.” *Reddick v.*
16 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998).

17 **B. Discussion**

18 Here, the ALJ concluded that Plaintiff suffered from degenerative disc
19 disease of the lumbar spine; obesity; posttraumatic stress disorder (PTSD); major
20 depressive disorder; and unspecified anxiety disorder. AR at 17-18. However, the
21 ALJ concluded Plaintiff only had mild to moderate limitations stemming from
22 these impairments and that Plaintiff’s “statements concerning the intensity,
23 persistence and limiting effects of [his] symptoms are not entirely consistent with
24 the medical evidence and other evidence in the record.” *Id.* at 21-23.

25 First, the ALJ found that Plaintiff’s actions indicated a relatively high level
26 of functionality. For example, the ALJ considered evidence that Plaintiff had
27 continued to apply for human resources jobs even after alleging disability; had
28 been the sole caregiver for his 6- and 17-year-old sons, who reportedly have

1 special needs; and had been working towards finishing his college degree. *Id.* at
2 21-22.

3 Second, the ALJ found that, for both Plaintiff's alleged physical and mental
4 limitations, there was evidence in the record contradicting Plaintiff's allegations
5 regarding his symptom severity. For example, despite Plaintiff's allegations of
6 being unable to stand for more than 10 minutes; sit for long periods of time; lift
7 more than 10 pounds; or sleep well due to back pain, the ALJ pointed to evidence
8 in the record suggesting that Plaintiff went to the gym; used power equipment;
9 slept well without interference from back pain; sat in his favorite chair as long as
10 he liked; and could lift light to medium weights if conveniently positioned. *Id.* at
11 22. The ALJ also noted that the objective medical evidence did not support the
12 severity of symptoms alleged—for example, the ALJ pointed out that Plaintiff's
13 lumbar MRI from October 2017 only showed mild to moderate degenerative
14 changes to the lumbar spine and that Plaintiff's treatment for his back pain had
15 been conservative (*i.e.*, pain medication, chiropractic treatment). *Id.*

16 Similarly, for Plaintiff's allegations of PTSD, anxiety, and depression, the
17 ALJ pointed to evidence in the record suggesting that Plaintiff's mental symptoms
18 were stable on psychotropic medications and that he had continued to function at a
19 high level (*e.g.*, caring for his sons, taking college courses full time, excelling in
20 his classwork). *Id.* at 22-23. These incongruencies, along with the ALJ's
21 assessment of medical expert opinions, led the ALJ to conclude that Plaintiff's
22 symptoms and functioning were not as limiting as he claimed in his application. *Id.*
23 at 26.

24 Having considered the ALJ's opinion, the Court finds that the ALJ erred in
25 his credibility determination and improperly discounted Plaintiff's testimony
26 regarding the severity of his limitations.

27 First, the Court finds that the ALJ's conclusion about Plaintiff's high level of
28 functionality is not supported by substantial evidence. In his decision, the ALJ

1 pointed to many aspects of Plaintiff’s behavior and activities that would seem to
2 suggest a degree of functioning, such as taking care of his children, attending
3 college courses, and seeking employment. AR 21-22. However, the ALJ failed to
4 include important contextual information about Plaintiff’s ability to perform these
5 activities. For example, although Plaintiff testified that he was the primary
6 caregiver for his two sons, he stated in his April 16, 2018 function report that, “I
7 feel they are actually taking care of me.” AR 40, 210. He also testified that he
8 always took his kids with him during his monthly grocery shopping trips “in case
9 something happened” and that his oldest son was responsible for heavy lifting,
10 vacuuming, and most of the cleaning around the house. AR 55, 61; *see also id.* at
11 329 (where Plaintiff reported that grocery shopping/running errands was “barely
12 tolerable” for him and that he ran in and out of the stores as fast as he could
13 because he could not tolerate the people in line, especially behind him). As for
14 Plaintiff’s college courses, Plaintiff reported that he had to take three quarters off
15 from college because of a mental breakdown. AR 41. Additionally, while attending
16 college, Plaintiff reported that he had a hard time focusing; that certain classes and
17 professors triggered his PTSD; and that he was feeling overwhelmed trying to
18 manage his classes, children, and health issues. AR 436-37, 451, 456-57. Thus, the
19 ALJ’s depiction of Plaintiff as high-functioning individual is not supported by
20 substantial evidence. Instead, the record shows that Plaintiff was struggling to
21 handle all his responsibilities. Furthermore, Plaintiff’s efforts to be a good father
22 and to seek school and employment responsibilities should not be held against
23 him—instead, the fact that Plaintiff tried to attend college and had to drop out
24 supports his alleged limitations. *Lingenfelter*, 504 F.3d at 1038-39; *see also*
25 *Reddick*, 157 F.3d at 722 (“[D]isability claimants should not be penalized for
26 attempting to lead normal lives in the face of their limitations.”).

27 Second, the Court finds that the ALJ’s conclusion that Plaintiff’s alleged
28 symptom severity was inconsistent with the medical record is not supported by

1 substantial evidence. For example, when discussing Plaintiff’s complaints about
2 the severity of his back pain, the ALJ concluded that the medical record and
3 objective medical findings were inconsistent with Plaintiff’s alleged severity. AR
4 22. However, Plaintiff’s medical records support that he had experienced low back
5 pain—specifically, mid-low back spasms resulting in severe pain, tightness, and
6 lack of functionality for days afterwards—since 2013. *See, e.g.*, AR 295 (during
7 September 4, 2015 visit, doctor noted that Plaintiff had experienced “low back pain
8 of 2 years duration”); *id.* at 334 (during April 24, 2015 physical exam for disability
9 benefits, Plaintiff reported “gradual onset of low back pain since about 2013” and
10 that back movements could cause “intermittent acute low back pain flareups for
11 about 30 minutes and these episodes occur about twice monthly”); *id.* at 442
12 (during March 1, 2018 visit, Plaintiff reported “intermittent mid-back spasms,
13 severe, last up to 5-10 minutes then leaves tightness of 1-2 days”); *id.* at 877
14 (during January 7, 2019 visit, Plaintiff reported severe back spasm while
15 shopping).

16 Additionally, the ALJ discounted Plaintiff’s credibility regarding the
17 severity of his back pain because the ALJ found that Plaintiff’s physical
18 examinations were normal and that “treatment for the allegedly debilitating back
19 pain has been limited and conservative (i.e., chiropractic treatment, pain
20 medications).” AR 22. However, this is also not supported by substantial evidence.
21 First, during Plaintiff’s physical examination on April 24, 2015, Dr. Naylor noted
22 multiple times that Plaintiff experienced muscle spasms in his back; had limited
23 ranges of motion in his right knee/shoulder; and that these conditions would impact
24 Plaintiff’s ability to work. AR 335-367. Moreover, though Plaintiff received
25 treatments at Houk Chiropractic Northwest, AR 403-29, 786-849, and had been
26 prescribed nonsteroidal anti-inflammatory drugs (NSAIDs) and muscle relaxants
27 for his back pain, AR 442, there are also multiple documented ER visits where
28 Plaintiff was given more serious pain medications for his back pain. AR 306

1 (describing ER visit sometime in August 2015 for low back pain and cervical pain
2 and where Plaintiff was treated with cyclobenzaprine and hydrocodone); *id.* at 447
3 (describing ER visit on September 13, 2017, where Plaintiff was treated with 60
4 mg of ketorolac).

5 As for Plaintiff’s complaints about his PTSD, anxiety, and depression, the
6 ALJ found that Plaintiff’s mental limitations were not as severe as alleged because
7 Plaintiff’s mental symptoms were stable on psychotropic medications; he often
8 reported that he was doing well and presented as unremarkable during mental
9 status examinations; and he exhibited a day-to-day ability to function at a high
10 level. AR 22-23. However, as already discussed above, the ALJ overstated
11 Plaintiff’s ability to function. Additionally, Plaintiff’s medical records show that
12 his success with medications and his ability to manage his PTSD, anxiety, and
13 depression has not been stable or consistent. For example, during Plaintiff’s March
14 2, 2018 psychiatrist visit, he reported that “he has experienced a great benefit from
15 the use of quetiapine” in helping reduce his night terrors, improve his sleep quality,
16 and boost his mood. AR 432-33. However, just over a month later, during
17 Plaintiff’s April 13, 2018 therapy visit, he reported that—though he was still taking
18 the quetiapine—he was once again having bad dreams, experiencing continuous
19 fatigue, and feeling like he was not making progress with facing his anxieties. AR
20 431. These kinds of two-steps-forward, two-steps-back examples appear
21 throughout Plaintiff’s medical records. *See, e.g.*, AR 910 (at his September 27,
22 2018 visit with a clinical pharmacist, Plaintiff reported that he “has felt much
23 better in the last week, feeling like himself again which he hasn’t felt in a long
24 time”); *id.* at 896 (at his October 18, 2018 therapy visit, Plaintiff appeared
25 “subdued” and stated that he was “lacking motivation”/was in a funk); *id.* at 873
26 (at his February 28, 2019 therapy visit, Plaintiff reported that he was “passing all
27 classes” and “doing well with medications”); *id.* at 863 (at his March 25, 2019
28 therapy session, Plaintiff reported that “things have been rough for him with

1 anxiety and depression”); *see also id.* at 329-30 (Plaintiff stated that sometimes his
2 anxiety was prohibitive and sometimes he could function better, but that it just
3 depended on what was going on).

4 Because the ALJ ignored substantial evidence in the record supporting
5 Plaintiff’s allegations regarding the severity of his physical and mental limitations,
6 the Court finds that the ALJ improperly discounted Plaintiff’s credibility when
7 considering his symptom testimony. Therefore, the Court remands this matter to
8 the ALJ for further proceedings.

9 2. Did the ALJ err by failing to properly weigh medical opinions from Dr.
10 Mansfield-Blair and Dr. Rubin regarding Plaintiff’s limitations?

11 Plaintiff also argues that the ALJ failed to properly weigh the opinions of
12 Dr. Karen Mansfield-Blair, Ph.D. (“Dr. Mansfield-Blair”) and Dr. Steven Rubin,
13 Ph.D. (“Dr. Rubin”) in determining Plaintiff’s residual function capacity. ECF No.
14 14 at 19. First, Plaintiff argues that Dr. Mansfield-Blair, unlike the doctors whose
15 opinions the ALJ relied on in his decision, was an examining source and was
16 actually able to personally interview, observe, and evaluate Plaintiff’s presentation
17 and subjective claims. *Id.* at 19. Plaintiff argues that these doctors’ opinions were
18 contrary to all other evidence in the record supporting Plaintiff’s disability and that
19 these opinions did not supersede Mr. Mansfield-Blair’s opinion. *Id.* Plaintiff also
20 argues that, though the ALJ relied on Dr. Rubin’s proposed mental limitations for
21 Plaintiff in his opinion, the ALJ disregarded Dr. Rubin’s statement that Plaintiff
22 would be absent from work one to two days a month due to his disability. *Id.* Thus,
23 Plaintiff argues that the ALJ’s failure to properly weigh these two opinions
24 constitutes harmful error and requires remand. *Id.* at 20.

25 First, Defendant argues that, under the new regulations governing Social
26 Security disability determinations, the ALJ is no longer required to give special
27 deference to the opinions of treating doctors. 20 C.F.R. § 404.1520c. ECF No. 22
28 at 11. Thus, Defendant argues that, under the new regulations, the ALJ properly

1 rejected Dr. Mansfield-Blair’s conclusion as inconsistent with her examination and
2 insufficiently supported by specific medical evidence or the remainder of the
3 medical record. *Id.* at 15-18. Second, Defendant argues that the ALJ properly
4 rejected Dr. Rubin’s statement about Plaintiff’s potential absenteeism from work
5 because Dr. Rubin himself acknowledged that this statement was speculative. *Id.* at
6 14-15.

7 **1. Dr. Mansfield-Blair**

8 For Social Security disability claims filed on or after March 27, 2017, the
9 ALJ “will not defer or give[] any specific evidentiary weight . . . to any medical
10 opinion(s).” 20 C.F.R. § 404.1520c(a). Instead, when evaluating the persuasiveness
11 of medical opinions, the two most important factors for the ALJ to consider are
12 supportability and consistency. *Id.* However, an ALJ must also consider the
13 medical source’s relationship with the claimant; the length of the treatment
14 relationship between the claimant and the medical source; the purpose of the
15 treatment relationship; the extent of the treatment relationship; whether the medical
16 source had an examining relationship with the claimant; the medical source’s
17 specialization; and other factors that might make a medical opinion more or less
18 persuasive. *Id.* at (c).

19 In her report, Dr. Mansfield-Blair, a consultative evaluating psychologist
20 who examined Plaintiff on November 11, 2018, concluded that—while Plaintiff
21 would not have difficulty performing simple and repetitive tasks; accepting
22 instructions from supervisors; interacting with coworkers; or performing work
23 activities on a consistent basis—Plaintiff would have difficulty performing detailed
24 and complex tasks; maintaining regular attendance; and dealing with usual levels
25 of stress in the workplace. AR 850, 854-55. Dr. Mansfield-Blair based these
26 conclusions on Plaintiff’s mental health symptoms, his diagnoses, and his
27 exhibited distress tolerance skills during the interview. *Id.* at 855.

1 The ALJ found that the opinion of Dr. Mansfield-Blair was “somewhat
2 persuasive but suffers from some deficiencies and indicates a degree of mental
3 impairment that is generally not consistent with the record as a whole.”
4 Specifically, the ALJ rejected Dr. Mansfield-Blair’s conclusions about Plaintiff’s
5 limitations in the workplace because (1) Plaintiff exhibited a high level of
6 intellectual functioning and performance on memory tasks during the interview,
7 suggesting that he would be capable of performing detailed and complex tasks at
8 work; (2) Dr. Mansfield-Blair’s conclusions were based solely on Plaintiff’s
9 “diagnoses,” which is not a valid basis for a medical opinion; and (3) her opinion
10 failed to quantify Plaintiff’s alleged difficulties. AR 25.

11 The Court finds that Dr. Mansfield-Blair’s conclusion that Plaintiff would
12 have difficulty performing detailed and complex tasks, maintaining regular
13 attendance, and dealing with usual levels of stress in the workplace is supported by
14 the record. For example, it appears that difficulties focusing, dealing with stress,
15 and ensuring regular attendance have all contributed to Plaintiff’s struggles to
16 finish his college degree. AR 209 (Plaintiff reporting that he had troubles
17 concentrating in his college coursework and failed a course because of it), 230-31
18 (Plaintiff’s stepmother also reporting that he tried to take college courses, but that
19 he struggled and failed courses because he could only concentrate for short periods
20 of time), 436-37, 451, 456-57.

21 Because the ALJ’s conclusion that Dr. Mansfield-Blair’s assessment was
22 inconsistent with the record is not supported by substantial evidence, the Court
23 finds that the ALJ erred by giving insufficient weight to Dr. Mansfield-Blair’s
24 opinions regarding Plaintiff’s limitations. Thus, the Court remands this matter to
25 the ALJ for further proceedings.

26 **2. Dr. Rubin**

27 The ALJ found that the opinion of Dr. Rubin was “largely persuasive.” *Id.*
28 at 23. Specifically, the ALJ adopted Dr. Rubin’s proposed findings that Plaintiff

1 had mild limitations in concentrating, persisting, maintaining pace; had moderate
2 limitations in interacting with others; and should avoid fast-paced work to reduce
3 stress. *Id.* But the ALJ rejected Dr. Rubin's estimate that Plaintiff may miss one or
4 two days of work per month because Dr. Rubin himself stated that this was
5 speculative. *Id.* at 23-24.

6 The Court upholds the ALJ's decision regarding Dr. Rubin's testimony.
7 Defendant is correct in noting that, when Dr. Rubin was asked about the basis for
8 his guess that Plaintiff would miss a few days of work each month due to his
9 psychological symptoms, Dr. Rubin admitted that he had no way of coming up
10 with an exact number and that guessing at one would be too speculative. AR 47-
11 48. Therefore, the ALJ's decision to reject Dr. Rubin's testimony was supported by
12 substantial evidence.

13 Accordingly, **IT IS HEREBY ORDERED:**

14 1. Plaintiff's Motion for Summary Judgment, ECF No. 14, is
15 **GRANTED.**

16 2. Defendant's Motion for Summary Judgment, ECF No. 22, is
17 **DENIED.**

18 3. The decision of the Commissioner is **REVERSED** and **REMANDED**
19 for further administrative proceedings consistent with this Order. On remand, the
20 ALJ shall reconsider (1) Plaintiff's subjective complaints about the nature and
21 intensity of his limitations; and (2) Dr. Mansfield-Blair's opinions regarding
22 Plaintiff's limitations. This remand is made pursuant to sentence four of 42 U.S.C.
23 § 405(g).

24 4. The District Court Clerk is directed to enter judgment in favor of
25 Plaintiff and against Defendant.

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**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT . . . # 17**

1 5. Plaintiff is permitted to request reasonable attorneys' fees and costs
2 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

3 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to file
4 this Order, provide copies to counsel, and **close** the file.

5 **DATED** this 14th day of July 2021.



10 *Stanley A. Bastian*

11 Stanley A. Bastian
12 Chief United States District Judge
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